

INITIATIVE 887

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 887 to the People is a true and correct copy as it was received by this office.

AN ACT Relating to driving under the influence reduction and enforcement; amending RCW 46.61.502, 46.74.030, 66.24.210, 66.24.290, 81.66.010, and 82.08.150; reenacting and amending RCW 9.94A.411, 9.94A.515, and 46.74.010; adding a new chapter to Title 66 RCW; creating a new section; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** FINDING. The people find and declare:

It is essential for the economic, social, and environmental well-being of the State and the maintenance of a high quality of life to insure that the roads in Washington State are a safe method of transportation.

One of the greatest threats to the safety of the public roads is people driving under the influence of beer, wine, and spirits. Getting these drivers out of the driver's seat of their motor vehicles and into another form of transportation is an obligation that the State has the ability to fulfill.

A large portion of this obligation can be met by providing a safe, cost effective, and convenient method of transportation to and from spirits, beer, and wine restaurant licensees and Washington state liquor stores and agencies.

The ability of the State to meet these transportation needs in a safe, cost effective, and convenient manner will be enhanced by tax

credits providing for private entities to undertake a portion of these transportation needs.

Another large portion of this obligation can be met by the State removing drivers from the road that are illegally driving under the influence and endangering their lives and the lives of others. In 2003 approximately 300 people were killed and approximately 7000 people were injured on Washington State roads by people driving under the influence. Our law enforcement and judicial agencies are doing an admirable job enforcing DUI laws with the resources we have provided them but we can provide more.

There are people that have had an opportunity to change their behavior and/or obtain treatment for their inability to control their behavior and refuse to do so. There are people who will still drive regardless of the availability of safe and convenient transportation.

Minors under the age of 12 are particularly vulnerable when being transported by a driver under the influence due to them being under the control of the driver. This is a serious offense that merits punishment as a class C felony.

Driving under the influence is a threat to public safety and repeat offenders that have been convicted multiple times merit punishment as a class B felons and must be incarcerated for 12 to 14 months in the state prison system.

We can provide the people in the State of Washington a choice between a safe and convenient method of transportation and being held accountable for their actions. We can provide a safe and convenient way for people to be responsible for their actions and enforce penalties if they are not. We can provide a structure that will cause a drastic reduction in people driving under the influence thus reducing it to a level that our law enforcement and judicial agencies can manage with the resources we provide them. We can provide new funding and tools to our judicial and law enforcement agencies so that they can bring law and order to this threat to public safety.

NEW SECTION. **Sec. 2.** **INTENT.** It is the intent of the people to insure that the roads in Washington State are a safe method of transportation by removing people driving under the influence of beer, wine, and spirits from the state roads. This is to be accomplished in the following manner:

1. Provide safe, cost effective, and convenient transportation to and from spirits, beer and wine restaurant licensees and Washington state liquor stores and agencies.
2. New taxes on spirits, beer, and wine will be used provide tax credits to spirits, beer and wine restaurant licensees that provide designated driver services to their patrons.
3. Funding is included for counties and cities to also provide transportation between people's places of abode and spirits, beer and wine restaurant licensees.
4. Discourage illegally driving under the influence of spirits, beer and wine and encourage people to utilize these new methods of transportation by:

- a. Provide funding for increased DUI enforcement.
- b. Providing funding for judicial expenses and incarceration for people that violate DUI laws.
- c. Raising child endangerment by transporting a minor child under the age of 12 while driving under the influence to a class C felony.
- d. Raising the penalties for offenders that have been convicted multiple times to a class B felony punishable by 12 to 14 months in the state prison system.

NEW SECTION. **Sec. 3.** DUI REDUCTION AND ENFORCEMENT ACCOUNT. The DUI reduction and enforcement account is created in the state treasury. All designated receipts from RCW 66.24.290(5), 66.24.210(5), and 82.08.150(6) must be deposited into the account. Moneys in the account may be spent only as follows:

(1) Fifty percent of the amounts deposited will be used to reimburse the general fund for tax credits taken under section 4 of this act;

(2) Up to ten percent of the amounts deposited are for the Washington state liquor control board for operating expenses;

(3) Seven percent to the department of corrections for incarcerating persons convicted of felony driving under the influence;

(4) Five percent to law enforcement agencies for enforcement of laws against driving under the influence;

(5) Five percent to cities and counties for judicial expenses relating to enforcement of laws against driving under the influence;

(6) Twenty-three percent to be divided among the counties apportioned by population to create designated driver ride programs as defined in RCW 46.74.010(2);

(7) Any remaining money will be carried over to the next year and used to reimburse the general fund for tax credits taken under section 4 of this act.

NEW SECTION. **Sec. 4.** (1) As used in sections 4 through 6 of this act, "board," "person," "restaurant," "spirits," "beer," and "wine" are as defined in RCW 66.04.010.

(2) Subject to the limits and provisions of this section, spirits, beer, and wine restaurant licensees in this state may take a credit against the tax otherwise due under RCW 66.24.290, 66.24.210, and

82.08.150 for providing services as a designated driver ride provider as defined in RCW 81.66.010.

(3) The credit under this section is equal to the amount spent providing designated driver ride provider services, including but not limited to costs of procuring vehicles, operating expenses, and employee costs, or contracting with a third person for designated driver ride services. The credit may not exceed the amount of tax that would otherwise be due under RCW 66.24.290, 66.24.210, and 82.08.150 for the beer, wine, or liquor sold or delivered to the spirits, beer, and wine restaurant licensee.

(4) The credit under RCW 82.08.150 applies to taxes paid on sales by Washington state liquor stores and agencies to spirits, beer, and wine restaurant licensees.

(5) The credit under RCW 66.24.210 applies to taxes paid on all wines except cider sold to wine distributors. The spirits, beer, and wine restaurant licensee can transfer the tax credit to a wine distributor for credit against taxes due by the wine distributor for wine purchases made from that distributor. The credit transferred to a wine distributor may not exceed the amount of tax that would otherwise be due under RCW 66.24.210 for the wine sold or delivered to the spirits, beer, and wine restaurant licensee from that wine distributor.

(6) The credit under RCW 66.24.290 applies to taxes paid on all beer and strong beer delivered by a microbrewer or domestic brewery or beer distributor licensed under RCW 66.24.290 to spirits, beer, and wine restaurant licensees in this state. The spirits, beer, and wine restaurant licensee can transfer the tax credit to a licensed microbrewer or domestic brewery or beer distributor for credit against the taxes due by the microbrewer or domestic brewery or beer distributor for beer or strong beer purchases made from that microbrewer or domestic brewery or beer distributor. The credit transferred to a microbrewer or domestic brewery or beer distributor may not exceed the amount of tax that would otherwise be due under RCW 66.24.290 for the beer or strong beer sold or delivered to the spirits, beer, and wine restaurant licensee by that microbrewer or domestic brewery or beer distributor.

(7) No application is necessary for the tax credit. The spirits, beer, and wine restaurant licensee must keep detailed records relating to procuring vehicles, operating expenses, and employee costs as well

as detailed records relating to spirits, beer, and wine purchases. The wine distributor and microbrewer or domestic brewery or beer distributor must keep detailed records relating to sales of the spirits, beer, and wine restaurant licensee for the tax credit claimed. This information is necessary for the board to verify eligibility under this section.

(8) If at any time the board finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been claimed is immediately due. The board shall assess interest, but not penalties, on the taxes for which the person is not eligible. The interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, be assessed retroactively to the date the tax credit was taken, and accrues until the taxes for which a credit has been used are repaid.

(9) A person taking tax credits under this section shall make an annual report to the board. The report must be in a letter form until such time as the board provides another method of reporting. This will include but is not limited to the following information: Identification of vehicle or vehicles, operating costs, and employee costs and positions for which credit is being claimed. The report must be filed by January 30th of each year for which credit was claimed during the previous year. Failure to file a report will not result in the loss of eligibility under this section. However, the board shall contact taxpayers who have not filed the report and obtain the data from the taxpayer or assist the taxpayer in the filing of the report, so that the data and information necessary to measure the program's effectiveness is maintained.

(10) Transfer of ownership does not affect credit eligibility. However, the successive credits are available to the successor only if the eligibility conditions of this section are met.

NEW SECTION. Sec. 5. (1) The board shall on the 25th of February, May, August, and November of each year advise the state treasurer of the amount of credit taken under section 4 of this act during the preceding calendar quarter ending on the last day of December, March, June, and September, respectively.

(2) On the last day of March, June, September, and December of each year, the state treasurer, based upon information provided by the board, shall deposit to the general fund a sum equal to the dollar

amount of the credit provided under section 4 of this act from the DUI reduction and enforcement account.

NEW SECTION. Sec. 6. (1) The board shall keep a running total of all credits accrued under this section during each fiscal year. No person is eligible for tax credits under section 4 of this act if the credits would cause the tabulation for the total amount of credits taken in any fiscal year to exceed fifty percent of the total of the taxes deposited into the DUI reduction and enforcement account by RCW 66.24.290(5), 66.24.210(5), and 82.08.150(6). This limitation includes any amounts carried forward under section 3(7) of this act from prior years.

(2) A person with taxes equal to or in excess of the credit under section 4 of this act may defer tax credits for a period of not more than two years after the year in which the credits accrue.

(3) No person is eligible for tax credits under section 4 of this act in excess of forty thousand dollars per year per vehicle the person provides as a designated driver ride vehicle, up to a total tax credit of one hundred twenty thousand dollars in any fiscal year.

Sec. 7. RCW 9.94A.411 and 2000 c 119 s 28 and 2000 c 28 s 17 are each reenacted and amended to read as follows:

(1) Decision not to prosecute.

STANDARD: A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

GUIDELINE/COMMENTARY:

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) Contrary to Legislative Intent - It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) Antiquated Statute - It may be proper to decline to charge where the statute in question is antiquated in that:

(i) It has not been enforced for many years; and

(ii) Most members of society act as if it were no longer in existence; and

(iii) It serves no deterrent or protective purpose in today's society; and

(iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) De Minimis Violation - It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) Confinement on Other Charges - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) Pending Conviction on Another Charge - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) Conviction in the pending prosecution is imminent;

(iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) High Disproportionate Cost of Prosecution - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases.

(g) Improper Motives of Complainant - It may be proper to decline charges because the motives of the complainant are improper and

prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

(h) Immunity - It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused's information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) Victim Request - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

(i) Assault cases where the victim has suffered little or no injury;

(ii) Crimes against property, not involving violence, where no major loss was suffered;

(iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute.

(a) STANDARD:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid prefiling agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be provided pursuant to RCW 9.94A.670.

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing

all the admissible evidence and the most plausible defense that could be raised.

See table below for the crimes within these categories.

CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

CRIMES AGAINST PERSONS

Aggravated Murder

1st Degree Murder

2nd Degree Murder

1st Degree Manslaughter

2nd Degree Manslaughter

1st Degree Kidnapping

2nd Degree Kidnapping

1st Degree Assault

2nd Degree Assault

3rd Degree Assault

1st Degree Assault of a Child

2nd Degree Assault of a Child

3rd Degree Assault of a Child

1st Degree Rape

2nd Degree Rape

3rd Degree Rape

1st Degree Rape of a Child

2nd Degree Rape of a Child

3rd Degree Rape of a Child

1st Degree Robbery

2nd Degree Robbery

1st Degree Arson

1st Degree Burglary

1st Degree Extortion

2nd Degree Extortion

Indecent Liberties

Incest

Vehicular Homicide

Vehicular Assault

Felony Driving Under the Influence

Felony Driving Under the Influence, Transporting a Minor

1st Degree Child Molestation

2nd Degree Child Molestation

3rd Degree Child Molestation

1st Degree Promoting Prostitution
Intimidating a Juror
Communication with a Minor
Intimidating a Witness
Intimidating a Public Servant
Bomb Threat (if against person)
Unlawful Imprisonment
Promoting a Suicide Attempt
Riot (if against person)
Stalking
Custodial Assault
Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050,
26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
Counterfeiting (if a violation of RCW 9.16.035(4))

CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson
1st Degree Escape
2nd Degree Escape
2nd Degree Burglary
1st Degree Theft
2nd Degree Theft
1st Degree Perjury
2nd Degree Perjury
1st Degree Introducing Contraband
2nd Degree Introducing Contraband
1st Degree Possession of Stolen Property
2nd Degree Possession of Stolen Property
Bribery
Bribing a Witness
Bribe received by a Witness
Bomb Threat (if against property)
1st Degree Malicious Mischief
2nd Degree Malicious Mischief
1st Degree Reckless Burning
Taking a Motor Vehicle without Authorization
Forgery
2nd Degree Promoting Prostitution
Tampering with a Witness
Trading in Public Office

Trading in Special Influence
Receiving/Granting Unlawful Compensation
Bigamy
Eluding a Pursuing Police Vehicle
Willful Failure to Return from Furlough
Escape from Community Custody
Riot (if against property)
1st Degree Theft of Livestock
2nd Degree Theft of Livestock

ALL OTHER UNCLASSIFIED FELONIES

Selection of Charges/Degree of Charge

(i) The prosecutor should file charges which adequately describe the nature of defendant's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

(A) Will significantly enhance the strength of the state's case at trial; or

(B) Will result in restitution to all victims.

(ii) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

(A) Charging a higher degree;

(B) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

(b) GUIDELINES/COMMENTARY:

(i) Police Investigation

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

(A) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;

(B) The completion of necessary laboratory tests; and

(C) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

(ii) Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

(A) Probable cause exists to believe the suspect is guilty; and

(B) The suspect presents a danger to the community or is likely to flee if not apprehended; or

(C) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

(iii) Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

(A) Polygraph testing;

(B) Hypnosis;

(C) Electronic surveillance;

(D) Use of informants.

(iv) Pre-Filing Discussions with Defendant

Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.

(v) Pre-Filing Discussions with Victim(s)

Discussions with the victim(s) or victims' representatives regarding the selection or disposition of charges may occur before the filing of charges. The discussions may be considered by the prosecutor in charging and disposition decisions, and should be considered before reaching any agreement with the defendant regarding these decisions.

Sec. 8. RCW 9.94A.515 and 2003 c 335 s 5, 2003 c 283 s 33, 2003 c 267 s 3, 2003 c 250 s 14, 2003 c 119 s 8, 2003 c 53 s 56, and 2003 c 52 s 4 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN
EACH SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050) Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076)
X	Child Molestation 1 (RCW 9A.44.083) Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) Kidnapping 1 (RCW 9A.40.020)

Leading Organized Crime (RCW
9A.82.060(1)(a))

Malicious explosion 3 (RCW
70.74.280(3))

Sexually Violent Predator Escape
(RCW 9A.76.115)

IX Assault of a Child 2 (RCW
9A.36.130)

Explosive devices prohibited (RCW
70.74.180)

Hit and Run--Death (RCW
46.52.020(4)(a))

Homicide by Watercraft, by being
under the influence of
intoxicating liquor or any drug
(RCW 79A.60.050)

Inciting Criminal Profiteering (RCW
9A.82.060(1)(b))

Malicious placement of an explosive 2
(RCW 70.74.270(2))

Robbery 1 (RCW 9A.56.200)

Sexual Exploitation (RCW
9.68A.040)

Vehicular Homicide, by being under
the influence of intoxicating
liquor or any drug (RCW
46.61.520)

VIII Arson 1 (RCW 9A.48.020)

Homicide by Watercraft, by the
operation of any vessel in a
reckless manner (RCW
79A.60.050)

Manslaughter 2 (RCW 9A.32.070)

Promoting Prostitution 1 (RCW
9A.88.070)

Theft of Ammonia (RCW 69.55.010)

Vehicular Homicide, by the operation
of any vehicle in a reckless
manner (RCW 46.61.520)

VII Burglary 1 (RCW 9A.52.020)

Child Molestation 2 (RCW
9A.44.086)

Civil Disorder Training (RCW
9A.48.120)

Dealing in depictions of minor
engaged in sexually explicit
conduct (RCW 9.68A.050)

Drive-by Shooting (RCW 9A.36.045)

Homicide by Watercraft, by disregard
for the safety of others (RCW
79A.60.050)

Indecent Liberties (without forcible
compulsion) (RCW 9A.44.100(1)
(b) and (c))

Introducing Contraband 1 (RCW
9A.76.140)

Malicious placement of an explosive 3
(RCW 70.74.270(3))

Sending, bringing into state depictions
of minor engaged in sexually
explicit conduct (RCW
9.68A.060)

Unlawful Possession of a Firearm in
the first degree (RCW
9.41.040(1))

Use of a Machine Gun in

Commission of a Felony (RCW
9A.12.025)

Vehicular Homicide, by disregard for
the safety of others (RCW
46.61.520)

VI Bail Jumping with Murder 1 (RCW
9A.76.170(3)(a))

Bribery (RCW 9A.68.010)

Felony Driving Under the Influence
(RCW 46.61.502(6))

Incest 1 (RCW 9A.64.020(1))

Intimidating a Judge (RCW
9A.72.160)

Intimidating a Juror/Witness (RCW
9A.72.110, 9A.72.130)

Malicious placement of an imitation
device 2 (RCW 70.74.272(1)(b))

Rape of a Child 3 (RCW 9A.44.079)

Theft of a Firearm (RCW 9A.56.300)

Unlawful Storage of Ammonia (RCW
69.55.020)

V Abandonment of dependent person 1
(RCW 9A.42.060)

Advancing money or property for
extortionate extension of credit
(RCW 9A.82.030)

Bail Jumping with class A Felony
(RCW 9A.76.170(3)(b))

Child Molestation 3 (RCW
9A.44.089)

Criminal Mistreatment 1 (RCW
9A.42.020)

Custodial Sexual Misconduct 1 (RCW
9A.44.160)

Domestic Violence Court Order
Violation (RCW 10.99.040,
10.99.050, 26.09.300,
26.10.220, 26.26.138,
26.50.110, 26.52.070, or
74.34.145)

Extortion 1 (RCW 9A.56.120)

Extortionate Extension of Credit
(RCW 9A.82.020)

Extortionate Means to Collect
Extensions of Credit (RCW
9A.82.040)

Incest 2 (RCW 9A.64.020(2))

Kidnapping 2 (RCW 9A.40.030)

Perjury 1 (RCW 9A.72.020)

Persistent prison misbehavior (RCW
9.94.070)

Possession of a Stolen Firearm (RCW
9A.56.310)

Rape 3 (RCW 9A.44.060)

Rendering Criminal Assistance 1
(RCW 9A.76.070)

Sexual Misconduct with a Minor 1
(RCW 9A.44.093)

Sexually Violating Human Remains
(RCW 9A.44.105)

Stalking (RCW 9A.46.110)

Taking Motor Vehicle Without
Permission 1 (RCW 9A.56.070)

IV Arson 2 (RCW 9A.48.030)

Assault 2 (RCW 9A.36.021)

Assault by Watercraft (RCW
79A.60.060)

Bribing a Witness/Bribe Received by
Witness (RCW 9A.72.090,
9A.72.100)

Cheating 1 (RCW 9A.46.1961)

Commercial Bribery (RCW
9A.68.060)

Counterfeiting (RCW 9A.16.035(4))

Endangerment with a Controlled
Substance (RCW 9A.42.100)

Escape 1 (RCW 9A.76.110)

Hit and Run--Injury (RCW
46.52.020(4)(b))

Hit and Run with Vessel--Injury
Accident (RCW 79A.60.200(3))

Identity Theft 1 (RCW 9A.35.020(2))

Indecent Exposure to Person Under
Age Fourteen (subsequent sex
offense) (RCW 9A.88.010)

Influencing Outcome of Sporting
Event (RCW 9A.82.070)

Malicious Harassment (RCW
9A.36.080)

Residential Burglary (RCW
9A.52.025)

Robbery 2 (RCW 9A.56.210)

Theft of Livestock 1 (RCW
9A.56.080)

Threats to Bomb (RCW 9A.61.160)

Trafficking in Stolen Property 1
(RCW 9A.82.050)

Unlawful factoring of a credit card or
payment card transaction (RCW
9A.56.290(4)(b))

Unlawful transaction of health
coverage as a health care service
contractor (RCW 48.44.016(3))

Unlawful transaction of health
coverage as a health maintenance
organization (RCW 48.46.033(3))

Unlawful transaction of insurance
business (RCW 48.15.023(3))

Unlicensed practice as an insurance
professional (RCW 48.17.063(3))

Use of Proceeds of Criminal
Profiteering (RCW 9A.82.080 (1)
and (2))

Vehicular Assault, by being under the
influence of intoxicating liquor or
any drug, or by the operation or
driving of a vehicle in a reckless
manner (RCW 46.61.522)

Willful Failure to Return from
Furlough (RCW 72.66.060)

III Abandonment of dependent person 2
(RCW 9A.42.070)

Assault 3 (RCW 9A.36.031)

Assault of a Child 3 (RCW
9A.36.140)

Bail Jumping with class B or C
Felony (RCW 9A.76.170(3)(c))

Burglary 2 (RCW 9A.52.030)

Communication with a Minor for
Immoral Purposes (RCW
9.68A.090)

Criminal Gang Intimidation (RCW
9A.46.120)

Criminal Mistreatment 2 (RCW
9A.42.030)

Custodial Assault (RCW 9A.36.100)

Escape 2 (RCW 9A.76.120)

Extortion 2 (RCW 9A.56.130)

Felony Driving Under the Influence.
Transporting a Minor (RCW
46.61.502(7))

Harassment (RCW 9A.46.020)

Intimidating a Public Servant (RCW
9A.76.180)

Introducing Contraband 2 (RCW
9A.76.150)

Malicious Injury to Railroad Property
(RCW 81.60.070)

Patronizing a Juvenile Prostitute
(RCW 9.68A.100)

Perjury 2 (RCW 9A.72.030)

Possession of Incendiary Device
(RCW 9.40.120)

Possession of Machine Gun or Short-
Barreled Shotgun or Rifle (RCW
9.41.190)

Promoting Prostitution 2 (RCW
9A.88.080)

Securities Act violation (RCW
21.20.400)

Tampering with a Witness (RCW
9A.72.120)

Telephone Harassment (subsequent
conviction or threat of death)
(RCW 9.61.230(2))

Theft of Livestock 2 (RCW
9A.56.083)

Trafficking in Stolen Property 2
(RCW 9A.82.055)

Unlawful Imprisonment (RCW
9A.40.040)

Unlawful possession of firearm in the
second degree (RCW
9.41.040(2))

Vehicular Assault, by the operation or
driving of a vehicle with
disregard for the safety of others
(RCW 46.61.522)

Willful Failure to Return from Work
Release (RCW 72.65.070)

II Computer Trespass 1 (RCW
9A.52.110)

Counterfeiting (RCW 9.16.035(3))

Escape from Community Custody
(RCW 72.09.310)

Health Care False Claims (RCW
48.80.030)

Identity Theft 2 (RCW 9.35.020(3))

Improperly Obtaining Financial
Information (RCW 9.35.010)

Malicious Mischief 1 (RCW
9A.48.070)

Possession of Stolen Property 1
(RCW 9A.56.150)

Theft 1 (RCW 9A.56.030)

Theft of Rental, Leased, or Lease-
purchased Property (valued at one
thousand five hundred dollars or
more) (RCW 9A.56.096(5)(a))

Trafficking in Insurance Claims
(RCW 48.30A.015)

Unlawful factoring of a credit card or
payment card transaction (RCW
9A.56.290(4)(a))

Unlawful Practice of Law (RCW
2.48.180)

Unlicensed Practice of a Profession or
Business (RCW 18.130.190(7))

I Attempting to Elude a Pursuing Police
Vehicle (RCW 46.61.024)

False Verification for Welfare (RCW
74.08.055)

Forgery (RCW 9A.60.020)

Fraudulent Creation or Revocation of
a Mental Health Advance
Directive (RCW 9A.60.060)

Malicious Mischief 2 (RCW
9A.48.080)

Mineral Trespass (RCW 78.44.330)

Possession of Stolen Property 2
(RCW 9A.56.160)

Reckless Burning 1 (RCW
9A.48.040)

Taking Motor Vehicle Without
Permission 2 (RCW 9A.56.075)

Theft 2 (RCW 9A.56.040)

Theft of Rental, Leased, or Lease-
purchased Property (valued at
two hundred fifty dollars or more
but less than one thousand five
hundred dollars) (RCW
9A.56.096(5)(b))

Transaction of insurance business
beyond the scope of licensure
(RCW 48.17.063(4))

Unlawful Issuance of Checks or
Drafts (RCW 9A.56.060)

Unlawful Possession of Fictitious
Identification (RCW 9A.56.320)

Unlawful Possession of Instruments of
Financial Fraud (RCW
9A.56.320)

Unlawful Possession of Payment
Instruments (RCW 9A.56.320)

Unlawful Possession of a Personal
Identification Device (RCW
9A.56.320)

Unlawful Production of Payment
Instruments (RCW 9A.56.320)

Unlawful Trafficking in Food Stamps
(RCW 9.91.142)

Unlawful Use of Food Stamps (RCW
9.91.144)

Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 9. RCW 46.61.502 and 1998 c 213 s 3 are each amended to read as follows:

(1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state:

(a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state shall not constitute a defense against a charge of violating this section.

(3) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(b) or (c) of this section.

(5) Except as provided in subsections (6) and (7) of this section, a violation of this section is a gross misdemeanor.

(6) A violation of this section by a person who has one or more prior offenses in five years, or has had two or more prior offenses in his or her lifetime is punishable as a class B felony according to chapter 9A.20 RCW. For the purposes of this subsection, the definition of "prior offense" in RCW 46.61.5055 applies.

(7) A violation of this section by a person while transporting a minor child under the age of twelve years in the vehicle is punishable as a class C felony according to chapter 9A.20 RCW.

Sec. 10. RCW 46.74.010 and 1997 c 250 s 8 and 1997 c 95 s 1 are each reenacted and amended to read as follows:

The definitions set forth in this section shall apply throughout this chapter, unless the context clearly indicates otherwise.

(1) "Commuter ride sharing" means a car pool or van pool arrangement whereby one or more fixed groups not exceeding fifteen persons each including the drivers, and (a) not fewer than five persons including the drivers, or (b) not fewer than four persons including the drivers where at least two of those persons are confined to wheelchairs when riding, are transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding special rider equipment, between their places of abode or termini near such places, and their places of employment or educational or other institutions, each group in a single daily round trip where the drivers are also on the way to or from their places of employment or educational or other institution.

(2) "Designated driver ride program" means a car pool or van pool arrangement whereby a group of at least two but not exceeding fifteen persons including the driver is transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding special rider equipment, between their places of abode or termini near such places, and spirits, beer, and wine restaurant licensees and Washington state liquor stores and agencies.

(3) "Flexible commuter ride sharing" means a car pool or van pool arrangement whereby a group of at least two but not exceeding fifteen persons including the driver is transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding special rider equipment, between their places of abode or termini near such places, and their places of employment or educational or other institutions, where the driver is also on the way to or from his or her place of employment or educational or other institution.

~~((+3+))~~ (4) "Ride sharing for persons with special transportation needs" means an arrangement whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider as defined in RCW 81.66.010~~((+3+))~~ (4) in a passenger motor vehicle as defined by the department to include small buses, cutaways, and modified vans not more than twenty-eight feet long: PROVIDED, That the driver need not be a person with special transportation needs.

~~((+4))~~ (5) "Ride-sharing operator" means the person, entity, or concern, not necessarily the driver, responsible for the existence and continuance of commuter ride sharing, flexible commuter ride sharing, designated driver ride program, or ride sharing for persons with special transportation needs. The term "ride-sharing operator" includes but is not limited to an employer, an employer's agent, an employer-organized association, a state agency, a county, a city, a public transportation benefit area, or any other political subdivision that owns or leases a ride-sharing vehicle.

~~((+5))~~ (6) "Ride-sharing promotional activities" means those activities involved in forming a commuter ride-sharing arrangement, a designated driver ride-sharing arrangement, or a flexible commuter ride-sharing arrangement, including but not limited to receiving information from existing and prospective ride-sharing participants, sharing that information with other existing and prospective ride-sharing participants, matching those persons with other existing or prospective ride-sharing participants, and making assignments of persons to ride-sharing arrangements.

~~((+6))~~ (7) "Persons with special transportation needs" means those persons defined in RCW 81.66.010~~((+4))~~ (5).

Sec. 11. RCW 46.74.030 and 1997 c 250 s 9 are each amended to read as follows:

The operator and the driver of a designated driver ride-sharing vehicle, a commuter ride-sharing vehicle, or a flexible commuter ride-sharing vehicle shall be held to a reasonable and ordinary standard of care, and are not subject to ordinances or regulations which relate exclusively to the regulation of drivers or owners of motor vehicles operated for hire, or other common carriers or public transit carriers. No person, entity, or concern may, as a result of engaging in ride-sharing promotional activities, be liable for civil damages arising directly or indirectly (1) from the maintenance and operation of a designated driver ride-sharing, commuter ride-sharing, or flexible commuter ride-sharing vehicle; or (2) from an intentional act of another person who is participating or proposing to participate in a designated driver ride-sharing, commuter ride-sharing, or flexible commuter ride-sharing arrangement, unless the ride-sharing operator or promoter had prior, actual knowledge that the intentional act was

likely to occur and had a reasonable ability to prevent the act from occurring.

Sec. 12. RCW 66.24.210 and 2001 c 124 s 1 are each amended to read as follows:

(1) There is hereby imposed upon all wines except cider sold to wine distributors and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter. There is hereby imposed on all cider sold to wine distributors and the Washington state liquor control board within the state a tax at the rate of three and fifty-nine one-hundredths cents per liter: PROVIDED, HOWEVER, That wine sold or shipped in bulk from one winery to another winery shall not be subject to such tax. The tax provided for in this section shall be collected by direct payments based on wine purchased by wine distributors. Every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a month or fraction thereof. The board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel the license until all taxes are paid.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. After June 30, 1996, such additional tax does not apply to cider. An additional tax of five one-hundredths of one cent per liter is imposed on cider sold after June 30, 1996. All revenues collected under this subsection (3) shall be

disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) An additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on fortified wine as defined in RCW 66.04.010(38) when bottled or packaged by the manufacturer, one cent per liter on all other wine except cider, and eighteen one-hundredths of one cent per liter on cider. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(5) An additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-five cents per liter, and the additional tax does not apply to cider. All revenues collected during any month from this additional tax must be deposited in the DUI reduction and enforcement account under section 3 of this act by the twenty-fifth day of the following month.

(6)(a) An additional tax is imposed on all cider subject to tax under subsection (1) of this section. The additional tax is equal to two and four one-hundredths cents per liter of cider sold after June 30, 1996, and before July 1, 1997, and is equal to four and seven one-hundredths cents per liter of cider sold after June 30, 1997.

(b) All revenues collected from the additional tax imposed under this subsection ~~((+5+))~~ (6) shall be deposited in the health services account under RCW 43.72.900.

~~((+6+))~~ (7) For the purposes of this section, "cider" means table wine that contains not less than one-half of one percent of alcohol by volume and not more than seven percent of alcohol by volume and is made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears. "Cider" includes, but is not limited to, flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must.

Sec. 13. RCW 66.24.290 and 2003 c 167 s 5 are each amended to read as follows:

(1) Any microbrewer or domestic brewery or beer distributor licensed under this title may sell and deliver beer and strong beer to holders of authorized licenses direct, but to no other person, other than the board; and every such brewery or beer distributor shall report

all sales to the board monthly, pursuant to the regulations, and shall pay to the board as an added tax for the privilege of manufacturing and selling the beer and strong beer within the state a tax of one dollar and thirty cents per barrel of thirty-one gallons on sales to licensees within the state and on sales to licensees within the state of bottled and canned beer, including strong beer, shall pay a tax computed in gallons at the rate of one dollar and thirty cents per barrel of thirty-one gallons. Any brewery or beer distributor whose applicable tax payment is not postmarked by the twentieth day following the month of sale will be assessed a penalty at the rate of two percent per month or fraction thereof. Beer and strong beer shall be sold by breweries and distributors in sealed barrels or packages. The moneys collected under this subsection shall be distributed as follows: (a) Three-tenths of a percent shall be distributed to border areas under RCW 66.08.195; and (b) of the remaining moneys: (i) Twenty percent shall be distributed to counties in the same manner as under RCW 66.08.200; and (ii) eighty percent shall be distributed to incorporated cities and towns in the same manner as under RCW 66.08.210.

(2) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to two dollars per barrel of thirty-one gallons. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(3)(a) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to ninety-six cents per barrel of thirty-one gallons through June 30, 1995, two dollars and thirty-nine cents per barrel of thirty-one gallons for the period July 1, 1995, through June 30, 1997, and four dollars and seventy-eight cents per barrel of thirty-one gallons thereafter.

(b) The additional tax imposed under this subsection does not apply to the sale of the first sixty thousand barrels of beer each year by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of this exemption.

(c) All revenues collected from the additional tax imposed under this subsection (3) shall be deposited in the health services account under RCW 43.72.900.

(4) An additional tax is imposed on all beer and strong beer that is subject to tax under subsection (1) of this section that is in the first sixty thousand barrels of beer and strong beer by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of the exemption under subsection (3)(b) of this section. The additional tax is equal to one dollar and forty-eight and two-tenths cents per barrel of thirty-one gallons. By the twenty-fifth day of the following month, three percent of the revenues collected from this additional tax shall be distributed to border areas under RCW 66.08.195 and the remaining moneys shall be transferred to the state general fund.

(5) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to fifteen dollars per barrel of thirty-one gallons. All revenues collected during any month from this additional tax must be deposited in the DUI reduction and enforcement account under section 3 of this act by the twenty-fifth day of the following month.

(6) The board may make refunds for all taxes paid on beer and strong beer exported from the state for use outside the state.

~~((+6+))~~ (7) The board may require filing with the board of a bond to be approved by it, in such amount as the board may fix, securing the payment of the tax. If any licensee fails to pay the tax when due, the board may forthwith suspend or cancel his or her license until all taxes are paid.

Sec. 14. RCW 81.66.010 and 1996 c 244 s 1 are each amended to read as follows:

The definitions set forth in this section shall apply throughout this chapter, unless the context clearly indicates otherwise.

(1) "Corporation" means a corporation, company, association, or joint stock association.

(2) "Designated driver ride provider" means a corporation, person, or private, nonprofit transportation provider that provides transportation services solely between places of abode or termini near

such places, and spirits, beer, and wine restaurant licensees and Washington state liquor stores and agencies.

~~((3))~~ (3) "Person" means an individual, firm, or a copartnership.

~~((+3+))~~ (4) "Private, nonprofit transportation provider" means any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs.

~~((+4+))~~ (5) "Persons with special transportation needs" means those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase appropriate transportation.

Sec. 15. RCW 82.08.150 and 2003 c 167 s 11 are each amended to read as follows:

(1) There is levied and shall be collected a tax upon each retail sale of spirits in the original package at the rate of fifteen percent of the selling price. The tax imposed in this subsection shall apply to all such sales including sales by the Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees.

(2) There is levied and shall be collected a tax upon each sale of spirits in the original package at the rate of ten percent of the selling price on sales by Washington state liquor stores and agencies to spirits, beer, and wine restaurant licensees.

(3) There is levied and shall be collected an additional tax upon each retail sale of spirits in the original package at the rate of one dollar and seventy-two cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees.

(4) An additional tax is imposed equal to fourteen percent multiplied by the taxes payable under subsections (1), (2), and (3) of this section.

(5) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of seven cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees. All revenues collected during any month from this additional tax shall be

deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(6) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of sixty cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees. All revenues collected during any month from this additional tax must be deposited in the DUI reduction and enforcement account under section 3 of this act by the twenty-fifth day of the following month.

(7)(a) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and seven-tenths percent of the selling price through June 30, 1995, two and six-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and three and four-tenths of the selling price thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees.

(b) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and one-tenth percent of the selling price through June 30, 1995, one and seven-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and two and three-tenths of the selling price thereafter. This additional tax applies to all such sales to spirits, beer, and wine restaurant licensees.

(c) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of twenty cents per liter through June 30, 1995, thirty cents per liter for the period July 1, 1995, through June 30, 1997, and forty-one cents per liter thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees.

(d) All revenues collected during any month from additional taxes under this subsection shall be deposited in the health services account created under RCW 43.72.900 by the twenty-fifth day of the following month.

~~((+7))~~ (8) The tax imposed in RCW 82.08.020 shall not apply to sales of spirits in the original package.

~~((+8+))~~ (9) The taxes imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale under this section. The taxes required by this section to be collected by the seller shall be stated separately from the selling price and for purposes of determining the tax due from the buyer to the seller, it shall be conclusively presumed that the selling price quoted in any price list does not include the taxes imposed by this section.

~~((+9+))~~ (10) As used in this section, the terms, "spirits" and "package" shall have the meaning ascribed to them in chapter 66.04 RCW.

NEW SECTION. **Sec. 16.** Section captions used in this act are not part of the law.

NEW SECTION. **Sec. 17.** Sections 1 through 6 of this act constitute a new chapter in Title 66 RCW.